

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

RALPH THOMAS MARTINEZ, JR.,                          )  
    )  
Petitioner,    )  
vs.    ) Case Number CIV-16-405-C  
    )  
JOE M. ALLBAUGH,                                        )  
    )  
Respondent.    )

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On April 13, 2018, United States Magistrate Charles B. Goodwin issued his Report and Recommendation (“R&R”) in this action in which Plaintiff pursues a 28 U.S.C. § 2254 action. Judge Goodwin recommended the case be denied. Petitioner has filed a response to the R&R, wherein he asks to dismiss his case.

Fed. R. Civ. P. 41(a) governs Petitioner’s request for dismissal. Subpart (1)(A)(i) of that rule permits a plaintiff to dismiss his case without court order at any time prior to the filing of an answer or motion for summary judgment. However, here Respondent has filed an Answer.\* Thus, Petitioner must proceed under Rule 41(a)(2) which permits dismissal only by the Court.

After considering the arguments raised by Petitioner and the R&R from Judge Goodwin, the Court declines to dismiss the action on Petitioner’s request. Rather, the

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\* Although the document filed by Respondent is titled “Response” the information contained therein is consistent with the information Rule 5 of the Rules Governing Section 2254 Cases requires to be included in an Answer. Accordingly, the Court will construe Dkt. No. 19 as an Answer.

Court adopts, in full, the Report and Recommendation of the Magistrate Judge (Dkt. No. 23) and he Petition for Habeas Corpus is DENIED. A separate judgment will issue.

IT IS SO ORDERED this 10th day of May, 2018.



ROBIN J. CAUTHRON  
United States District Judge